

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 352 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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THAKKAR JETHALAL BHIKHALAL

Versus

BAI MANGLA RATANLAL PARSHOTAM  
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Appearance:

MR SR SHAH for Petitioners  
MR AJ PATEL for Respondent No. 1  
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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/05/2000

CAV JUDGEMENT

This petition under Article 227 of the Constitution of India is preferred by a partnership firm named M/s Thakkar Jethalal Bhikhabhai, carrying on business at Petlad, Dist.: Kheda, for quashing and

setting aside the orders at Annex.A & B passed by two authorities in the matter relating to the provisions of Gujarat Rural Debtors Relief Act, 1976 ( hereinafter referred to as the said "Act" ). Order at Annex.A is the order dated 15.11.1987 passed by the Debt Settlement Officer & Registrar, Co.Op.Societies, District Kheda at Nadiad (hereinafter referred to as "DSO" ). Order Annex.B is of April, 1987 which came to be intimated to the petitioner vide communication dated 25.2.1987, passed by the District Registrar, Co.Op.Societies & Appellate Officer, Nadiad.

Respondent Nos.1, 2A to 2C and Respondent Nos. 3 to 5 claimed that they are "small farmers" of joint family as defined under the provisions of the said Act. According to the petitioners, Respondents filed an application before the Debt Settlement Officer for scaling down the debt under the provisions of the said Act. Respondent No.6 is one of the creditors against whom a simultaneous prayer to scale down debt was made before the DSO. Application to scale down the debt was filed by Respondent Nos. 1 to 5 on 30.11.1976, wherein it was contended that they are indebted to the petitioners and other persons and, therefore, entire debt against the persons mentioned in the original application should be scaled down as Respondent Nos.1 to 5 are the "small farmers" within the meaning of the Act. After service of notice, the petitioners filed written objections to the application on 1.3.1978 and after hearing the parties and considering the evidence led, DSO, vide his order dated 27.3.1979, held that Respondent Nos. 1 to 5 are not the "small farmers" and further held that debt referred to in the application by the applicants is the business debt incurred due to supply of business material by the traders. All the respondents constitute joint family and joint family owned unirrigated land to the extent of A-6-30 Gunthas. For the aforesaid reasons, application came to be dismissed. Feeling aggrieved by the said order, Respondent Nos. 1 to 5 preferred an appeal before the appellate officer appointed under the provisions of the said Act and in the said appeal, Appellate Officer held that bai MangalaRespondent no.1 and other respondents were not "small farmers" and, therefore, they are not entitled to any relief by way of settlement of debt. In short, the appellate officer confirmed the order passed by the DSO on 27.3.1979. Respondent Nos. 1 to 5, feeling aggrieved by two concurrent findings against them given by both the authorities, preferred writ petition being Special Civil Application No. 3411/79 wherein it was contended that they were not given an opportunity of cross-examining the witnesses and that they were not properly heard when the

matter came up for hearing. While allowing the petition, vide oral judgment and order dated 7.10.1982, this Court passed the following order:-

" For the reasons stated in the oral judgment, the court allows the petition, quashes and sets aside the order passed by the Debt Settlement Officer at Annex.A and the order passed by the Appellate Officer at Annex.B and remanding the matter back to the Debt Settlement Officer at Nadiad with a direction to decide the application filed by the petitioners afresh after hearing both the sides and keeping in view the observations made in this judgment."

It is contended by the petitioner that despite the repeated requests made by the petitioners, matter was not heard by the DSO on remand for a pretty long time and ultimately, matter was heard on 22nd December, 1986 i.e. after 4 years. It is averred that the petitioners obtained a decree of a competent court against the respondents and they had filed execution petition, but execution petition was not heard because of the pendency of the application before the DSO considering the provisions of the Act. Considering the oral as well as documentary evidence led by the original applicants (respondent nos. 1 to 5 herein), it transpires that the applicants have tried to establish that on the "appointed date", they were "small farmers" and were holding unirrigated agricultural lands admeasuring A-4-24 Gunthas. It was specifically pleaded that the lands of survey no.202 admeasuring about A-1-06 Gunthas were mortgaged with a third person and, therefore, in reality, the actual holding of respondent nos. 1 to 5 was A-3-80 Gunthas. The DSO held that respondent nos. 1 to 5 were "small farmers" and even if it is accepted that the lands owned and possessed by them were irrigated by well water, it cannot be held to be an irrigated land. The plea of the defendants that debt accrued because of supply of business material to respondent nos. 1 to 5, was not accepted by the D.S.O. The order passed by the DSO was challenged by the petitioners before the appellate officer by filing appeal and after hearing both the parties in the said appeal, the appellate officer, vide order dated nil-April, 1987 (Annex.B), confirmed the order passed by the DSO on 15.1.1987 (Annex.A) and which order of the appellate officer came to be served to the petitioners vide communication dated 25.4.1987. Feeling aggrieved by both the orders as aforesaid which came to be passed after the order of remand referred earlier by this Court in Spl.Civil Application No. 3411/1979, the petitioners have preferred present petition challenging

the said orders.

It is not necessary to narrate the grounds mentioned in the petition because the petitioners have challenged/questioned the legality, validity and propriety of the orders from all the corners. On perusal of both the orders, it is clear that observations made by this Court while remanding the matter in the order referred to above in Spl.Civil Application No. 3411/79, have not been considered by both the authorities in its true and proper perspective. It was specifically brought on record by the creditors that in the civil suit filed by them, suit was decreed in their favour for the amount of Rs.3047-47 ps. and that said amount is recoverable against the material supplied by the petitioners to respondent nos. 1 to 5. Considering the transactions of the family of respondent nos. 1 to 5 with various traders, having their business premises in the bazar of town Petlad, it transpires positively that respondent nos. 1 to 5 are not agriculturists. Looking to the number of family members in the joint family of respondent nos. 1 to 5 and actual agricultural holding of the family, DSO ought to have considered the evidence led by the creditors to the effect that family members of respondent nos.1 to 5 simultaneously were doing business,because it is not easy to maintain comparatively a big family only on agricultural holding of H-1-36-75 Are. It is satisfactorily established that one of the survey number owned by respondent nos. 1 to 5 has well and lands are being irrigated from the water of that well. It is on record that respondent no.5 Dahyabhai Ratanlal Shah, one of the members of a joint family, availed a cash credit facility of Rs.5,000/ from Petlad Nagarik Sahakari Bank Ltd. on 26.11.1971. One of the partners of the creditor firm, running business in the name & style of Manubhai Dawawala, one Manubhai Tribhovandas Shah stood as one of the guarantors / sureties for said Dahyabhai Ratanlal Shah. Deposition of Manubhai Tribhovandas Shah is not properly appreciated and it gives an impression that practically, the same is ignored by both the authorities. This witness had named the business run by the family of respondent nos. 1 to 5 in the name & style of Rupal Hotel. It is on record that as Dahyabhai Ratanlal Shah had failed in returning the amount taken from the Co.Op. Bank by availing of the cash credit facility, guarantor surety Shri Manubhai Tribhovandas Shah had to pay Rs. 1250/ to the Bank. One Gunvantbhai ( Respondent no.3 and wrongly mentioned in the petition as well as in writing as Respondent No.2C), one of the brothers of respondent nos. 1 to 5, had executed a writing in favour of this witness Shri Manubhai Tribhovandas Shah to this effect. By executing

abovesaid writing, scooter bearing No. MTY 2972 was also pledged. Deposition of Rajendraprasad Ambalal Bhatt is very clear in this regard. Documents sought from bank record and proved, ought not to have been ignored by both the authorities. Stand taken by the petitioners is consistent from the very beginning. Even after remand, it was open to respondent nos. 1 to 5 to bring certified copy of the suit filed by the petitioners on the record of the proceedings, and a copy of the written statement filed by them for substantiating the stand taken. It seems that the original applicants before the DSO have failed in bringing on record aforesaid best evidence available to them. It is impliedly accepted by DSO that the lands held and possessed by respondent nos. 1 to 5 are being irrigated by the water of the well situated in one of the survey numbers possessed by respondent nos. 1 to 5. It is in the main application that some part is being irrigated by canal water. It is rightly argued that in view of the fact that lands of respondent nos. 1 to 5 were being irrigated by the water of the well etc, lands possessed by them ought to have been held as "irrigated lands" and DSO ought to have calculated the holding of respondents twice the holding held by respondent nos. 1 to 5 viz. A-3.18 Gunthas + A.3-18 Gunthas = A-6-36 Gunthas. ( H-1-36-75 Are + H-1-36-75 Are). It is not a matter of dispute that agriculturist holding lands not exceeding 2.02 Hactare in Petlad taluka of District Kheda, falls within the definition of "small farmer". Lands are situated in village Agas of Petlad Taluka. Appointed date, according to the provisions of the Act, is 14th August, 1976. It is not specifically pleaded by the original applicants viz. respondent nos. 1 to 5 that hotel run by them in the name and style as Rupal Hotel, was closed prior to the appointed date. On the contrary, it is on record that family of respondent nos. 1 to 5 was also running Gruh Udhyog in the name and style as Jay Ambe Gruh Udhyog. Both the authorities materially erred, in absence of convincing evidence, in holding that Rupal Hotel and Jay Ambe Gruh Udhyog run by family members of respondent nos. 1 to 5 were closed prior to 1976 and were not in existence on the appointed date.. During the course of submissions, my attention was drawn to the judgment delivered by the learned Civil Judge (J.D.), Petlad on 8.8.1980 in Reg.Civil Suit No. 80/78. Plaintiff of the aforesaid civil suit was one Shah Dahyabhai Ratanlal of village Agas. It is submitted that respondent no.5 Dahyabhai Ratanlal Shah is the same person. In other words, respondent no.5 was the plaintiff of Reg.Civil Suit No. 80/78 wherein it was contended that respondent no.5 had given Rs. 2150/ to defendant no.2 of that suit so that defendant no.2 can

purchase sugar for defendant no.1 of the suit. Defendant no.1 of the said suit is Agas Seva Sahakari Mandali Ltd. On the strength of the writing executed by the Secretary of defendant no.1 Mandali viz. defendant no.2 of the suit, respondent no.5 filed aforesaid suit for recovery of the aforesaid amount. That suit of the plaintiff came to be dismissed in view of the provisions of sec. 167 of the Gujarat Co-operative Societies Act by the learned Civil Judge (J.D.), Petlad. This Court is not sitting as an appellate court over the orders passed by two statutory authorities. However, powers of superintendence require to be exercised when the statutory authorities fail to discharge legal and obligatory duties or commit serious error while dealing with the proceedings, judicial or quasi-judicial in nature. In view of the facts and circumstances of the case and in light of material on record, since both the statutory authorities failed in discharging legal and obligatory duties and have committed serious error of not appreciating, and practically ignoring, the evidence which the petitioners have brought on record, both the orders require to be quashed and set aside. The error committed has resulted into gross injustice. I agree that certified copy of the judgment of the above referred civil suit might not have been brought on record, but while exercising powers of superintendence, this Court can positively peruse the contents of certified copy of the judgment of a competent civil court to appreciate veracity of the witnesses examined in quasi-judicial proceedings, with a view to do the substantial justice. It is not the say of the otherside that no such suit was filed by Respondent Nos. 1 to 5 and the submission in this regard is missing. It is also important to note that when the matter is remanded to the authority concerned with a direction to re-try the entire proceedings in accordance with law, and when authority concerned is unless prohibited by a written order to refer to earlier record of the remanded matter, authority can or is obliged to look into and appreciate the same. Parties can also take advantage of the facts and circumstances reflected from the record of prior to remand proceedings. Authority who decides the dispute between the parties also cannot ignore entire previous proceedings and findings, if recorded either by him or by his predecessor in office, otherwise it would encourage the parties to take contrary or conflicting stands. In the case on hand, deposition-statement admitting important facts and contents of the original application filed by the applicant-debtor is ignored. Deviation normally should not be permitted or to be encouraged merely because the matter is remanded for retrial in

absence of any prohibitory orders.

Plain reading of first order dated 27.3.1979 passed by DSO gives an indication that it was not the case from the beginning that respondent nos. 1 to 5 were only farmers and they were not mainly engaged in any business either in the name and style as Rupal Hotel, or Shah & Company, or Jay Ambe Gruh Udhyog. So, respondent nos. 1 to 5 have substantially deviated from their earlier stand on remand of the matter. Considering definition of "debt", "debtor" and "farmer" in sec.2(c), 2(d) and 2(f) of the Act respectively and on simultaneous reading of these definitions, it shall have to be held that debt incurred by respondent nos. 1 to 5 qua the petitioners-creditors was not a "debt" within the meaning of sec.2(c) of the Act and further it shall have to be held that respondent nos.1 to 5 are not "small farmers" and "debtor" as defined under the provisions of the Act.

In view of the above said set of facts and circumstances of the case, I am inclined to accept this petition. Hence, petition is allowed. Impugned orders passed by both the authorities at Annex. A & B respectively, are hereby quashed and set aside. No other material procedural error is pleaded by either of the parties. Hence, it is further held that original applicant Dahyalal Ratanlal Shah ( Respondent no.5) or deceased Ratanlal Purshottamdas Shah and their family members were not "small farmers" as on appointed date and the petitioners are legally entitled to recover the entire debt amount decreed by the competent civil court in their favour. Rule is made absolute accordingly. Looking to the facts and circumstances of the c

order as to costs.

[ C.K. BUCH, J]

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